

BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for the
Termination of Probation of:

Case No. ID 2005 64425

OAH No. L2005120792

SCOTT WAYNE GREGORY,

Petitioner.

DECISION

On February 6, 2006, in San Diego, California, a quorum of the Physical Therapy Board of California, Department of Consumer Affairs, State of California heard and decided the Petition for Termination of Probation of Scott Wayne Gregory.

Present at the hearing were Board President Donald A. Chu, Ph.D., P.T. and Board Members Lorraine K. Kimura, P.T., Ellen Wilson, P.T., Nancy Krueger, P.T. and Phillip Chen.

Administrative Law Judge James Ahler, Office of Administrative Hearings, State of California, conducted the administrative proceeding.

Deputy Attorney General Beth Faber Jacobs appeared on behalf of the Office of the Attorney General, State of California.

Petitioner Scott Wayne Gregory appeared telephonically and was present throughout the hearing.

Following the taking of documentary evidence and sworn testimony, the matter was submitted and decided by the Board in Executive Session.

FACTUAL FINDINGS

1. In February 2003, Scott Wayne Gregory (petitioner or Gregory) filed an application for physical therapist licensure with the Physical Therapy Board of California

(the Board). Petitioner failed to disclose a January 1993 conviction of driving under the influence in that application. Petitioner's conviction arose out of an incident occurring in October 1992 in the State of Georgia. The application for licensure was signed under penalty of perjury.

2. Thereafter, the Board denied petitioner's request for an unrestricted license to practice physical therapy under Business and Professions Code sections 480, subdivisions (a) and (c), 582 and 2660.2, based on petitioner's conviction and his failure to disclose that conviction.

3. On September 9, 2003, the Board issued an order granting petitioner a probationary physical therapist license. The probationary license contained numerous terms and conditions. The period of probation was three years. The Board's decision became effective on October 9, 2003.

Terms and conditions of probation required, among other matters, that petitioner obey all laws, file quarterly reports, practice in a supervised environment, not provide physical therapy services in a patient's home, not engage in a solo practice, not work graveyard shifts, not supervise interns, submit to interviews, and not work as a physical therapist less than 20 hours a week.

4. On October 1, 2005, petitioner signed a Petition for Termination of Probation. In that petition and in the attachments to it, petitioner set forth the reasons he incorrectly answered the question in the application and set forth the lessons he had learned from that mistake. He requested that probation be terminated. He advised the Board of the continuing professional education courses he had taken since he was placed on probation. Two letters of recommendation from licensed physical therapists accompanied the petition.

5. The petition was investigated by the Division of Investigation, Department of Consumer Affairs, State of California, and was assigned to the Attorney General's Office, State of California.

6. Petitioner is 35 years old. In October 1992, when he was 21 years old and attending school in Georgia, he had too much to drink one evening and attempted to drive home. Petitioner was arrested for driving under the influence, a charge to which he pled nolo contendere on January 7, 1993. The Department of Justice's investigation into the matter at the time of petitioner's application for licensure indicated the conviction was an infraction for which petitioner was fined \$626. In his testimony, petitioner stated the conviction was a misdemeanor. In either event, petitioner admitted he did not disclose the conviction in his application for licensure, claiming he was in a hurry and had the impression disclosure was not required. Since then, petitioner has come to learn his haste and omission were serious matters with lasting consequences. Petitioner expressed regret and embarrassment.

Some of the terms and conditions of probation have interfered with employment opportunities and have prevented petitioner from certain kinds of employment.

According to all sources, petitioner complied with all terms and conditions of probation. His colleagues believe petitioner to be a competent, honest and ethical practitioner. Petitioner recently disclosed his conviction, his failure to disclose that conviction in the California application, and the probationary status of his California license when applying for a physical therapy license in Arizona.

Petitioner initially sought the termination of probation because he wanted to apply for a license and employment out-of-state, but his plans to move have changed. He would like to have his license fully restored because he has done all that has been asked of him and because it is a matter of pride.

7. The Attorney General's Office did not oppose petitioner's request for the early termination of probation.

LEGAL CONCLUSIONS

1. Government Code section 11522 provides in part:

"A person whose license has been revoked or suspended may petition the agency for . . . reduction of penalty after a period of not less than one year has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency itself. The agency itself shall decide the petition, and the decision shall include the reasons therefor . . . This section shall not apply if the statutes dealing with the particular agency contain different provisions for . . . reduction of penalty."

2. Business and Professions Code section 2661.7 provides in part:

"(a) A person . . . who has been placed on probation, may petition the Physical Therapy Board of California for . . . termination of probation, after a period of not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action:

. . .

(2) At least two years for early termination of probation of three years or more . . .

(b) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physical therapists licensed by the board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(c) The petition may be heard by the board . . .

(d) The board . . . hearing the petition, may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the license was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability . . . ”

3. California Code of Regulations, title 16, section 1399.21 provides in part:

“When considering . . . a petition for reinstatement under Section 11522 of the Government Code, the board, in evaluating the rehabilitation of the applicant and his or her present eligibility for a license shall consider the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

(d) The extent to which the applicant has complied with any terms of . . . probation . . . lawfully imposed against the applicant.

(e) Evidence, if any, of rehabilitation submitted by the applicant.”

4. There are two purposes for the Legislature mandating a statement of reasons for the decision of an agency proceeding under Government Code section 11522. First, a statement of reasons enables a reviewing court to examine the administrative record to ascertain whether there is substantial evidence to support the decision. Second, a statement of reasons advises the rejected petitioner for reinstatement what his deficiencies are and tells him what he should do to make a subsequent petition meritorious. *Crandell v. Fox* (1978) 86 Cal.App.3d 760, 765.

5. Cause was established to grant the petition requesting the early termination of probation.

Petitioner was convicted of driving under the influence in Georgia in 1993. He paid his fine and completed probation. In February 2003, petitioner applied to the Board for the issuance of a physical therapy license, but he failed to disclose the 1993 driving under the influence conviction. Although petitioner’s application for an unrestricted license was

denied, he was issued a three year initial probationary license. Between October 2003 and the present, petitioner has been on probation. Terms and conditions of his probation have restricted his practice in many respects. Petitioner has complied with all terms and conditions of probation and enjoys the respect and trust of colleagues and employers. Requiring petitioner to continue probation would not serve any public interest under all the circumstances. The Attorney General's Office did not oppose the petition for an early termination of probation.

This conclusion is based on all Factual Findings and Legal Conclusions 1-4.

ORDER

Scott Wayne Gregory's Petition for the Termination of Probation is granted.

DATED: March 10, 2006

Original Signed By:
Donald A. Chu, Ph.D., P.T., President
PHYSICAL THERAPY BOARD OF CALIFORNIA

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The foregoing Decision, in case number 1D 2005 64425 , is hereby adopted by the Physical Therapy Board, Department of Consumer Affairs, State of California.

This decision shall become effective on the 10th day of April, 2005.

It is so ordered this March 10, 2006 .

Original Signed By:
Donald A. Chu, P.T., President
Physical Therapy Board of California